

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

BENJAMIN SUKUP,

Defendant.

CASE NO. 8:05CR131

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the government’s objections thereto (Filing No. 81). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The government objects to ¶¶s 34, 35, 36 and 38, arguing that under *United States v. Webb*, 218 F.3d 877 (8th Cir. 2000), the Defendant must receive one criminal history point for the offenses listed in ¶¶ 35, 36 and 38, because those offenses are not similar to the offenses listed in U.S.S.G. § 4A1.2(c)(2). The Court's tentative findings are that the objections should be granted, which results in a total of 4 criminal history points, criminal history category III, and a sentencing guideline range of 120-135 months after the application of U.S.S.G. § 5G1.1(c)(2).

IT IS ORDERED:

1. The government's Objections to the Presentence Investigation Report (Filing No. 81) are granted;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 18th day of August, 2005.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge